

# Law Office of Nora J. Chorover

nchorover@choroverlaw.com

December 1, 2016

RECEIVED

DEC - 7 2016

## **BY CERTIFIED MAIL**

Thomas E. Reed, President  
Rust-Oleum Corporation  
11 Hawthorne Parkway  
Vernon Hills, IL 60061  
Certified Mail #: 7014 3490 0000 7429 9487

OFFICE OF THE REGIONAL ADMINISTRATOR  
Corporation Service Company,  
Registered Agent for  
Rust-Oleum Corporation  
84 State Street,  
Boston, MA 02109  
Certified Mail #: 7014 3490 0000 7429 9494

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance  
with Federal Clean Water Act's Pretreatment Program: 113 Olive Street,  
Attleboro, Massachusetts.

Dear Sirs,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against Rust-Oleum Corporation ("Rust-Oleum"). The subject of the action will be Rust-Oleum's unlawful discharge of industrial wastewater from its Paint and Coating Manufacturing facility at 113 Olive Street, Attleboro (the "Facility"). Industrial wastewater from the Facility is discharged into the City of Attleboro's Publicly Owned Treatment Works ("POTW"). The POTW discharges into the Ten Mile River.

## **BACKGROUND**

For at least the past fourteen months, Rust-Oleum has had a pattern of exceeding the POTW's local pretreatment limit for temperature. Rust-Oleum is subject to a local limit of 100 °F on discharges to the POTW. Clean Water Action reserves its right to include as violations all temperature exceedences that occurred during the last five years. The temperature of Rust-Oleum's discharge into the POTW has increased since September 2015. In June, the last month for which discharge monitoring reports are available, the temperature of Rust-Oleum's discharge was 130 °F.

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Boston, MA 02130  
617-477-3550  
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The Clean Water Act prohibits the discharge of pollutants by an indirect discharger into a POTW unless the discharge complies with any applicable “local limit” established by the POTW. See Sections 301(a) and 307(d) of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1311(a), 1317(d). Local limits are essential to maintaining the integrity of the POTW’s operations and to protect the quality of the POTW’s receiving water. Local limits may be more stringent than federal pretreatment standards. 40 C.F.R. § 403.4.

The City of Attleboro has established a local limit of 100 °F for temperature. Excessive amounts of heat within the wastewater treatment facility may interfere with the system’s ability to break down organic material and may disrupt the functioning of the treatment facility as a whole.

Clean Water Action will ask the Court to ensure Rust-Oleum’s future compliance with the Act, assess civil penalties in an appropriate amount,<sup>1</sup> award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action’s complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director  
Clean Water Action  
88 Broad Street  
Boston, MA 02110  
(617) 338-8131  
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:  
Nora J. Chorover  
Law Office of Nora J. Chorover  
11 Green Street  
Boston, MA 02130  
617-477-3550

## **RUST-OLEUM’S VIOLATIONS AND DATES OF VIOLATIONS**

Rust-Oleum’s temperature violations are set forth on a Table attached as Exhibit A hereto. The Complaint, when filed, will set forth additional days of violations that occur between the date of this letter and the date on which the Complaint is filed.

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<sup>1</sup> The Statute authorizes the Court to assess a penalty of *up to* \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).



December 2, 2016

**CONCLUSION**

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover

Attorney for Clean Water Action

cc: (by certified mail)

Paul A. Kennedy, Superintendent  
Attleboro Municipal Department of  
Wastewater  
77 Park Street  
Attleboro, MA 02703  
Certified Mail #: 7014 3490 0000 7429 9999

Plant Manager, Rust-Oleum Corporation  
113 Olive Street  
Attleboro, MA 02703  
Certified Mail #: 7014 3490 0000 7429 9517

Curt Spalding, Regional Administrator  
EPA New England, Region 1,  
5 Post Office Square, Ste. 100  
Boston MA 02109  
Certified Mail #: 7014 3490 0000 7429 9524

Martin Suuburg, Commissioner  
Massachusetts Department of  
Environmental Protection  
1 Winter Street  
Boston, MA 02108  
Certified Mail #: 7014 3490 0000 7429 9531

Gina McCarthy, Administrator  
US EPA Headquarters, Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Certified Mail #: 7014 3490 0000 7429 9548



**EXHIBIT A**  
**TABLE OF RUST-OLEUM'S VIOLATIONS**  
**SEPTEMBER 1, 2015<sup>1</sup> TO THE PRESENT**

<b><u>Limit Type</u></b>	<b><u>Parameter</u></b>	<b><u>Limit Value</u></b>	<b><u>Measured Value</u></b>	<b><u>Date of Violation</u></b>	<b><u>Number of Violations</u></b>
Daily Max.	Temperature	100°F	112 °F	Sept. 10	1
Daily Max.	Temperature	100°F	119 °F	Sept. 14	1
Daily Max.	Temperature	100°F	119 °F	Sept. 15	1
Daily Max.	Temperature	100°F	119 °F	Sept. 16	1
Daily Max.	Temperature	100°F	124 °F	Sept. 17	1
Daily Max.	Temperature	100°F	126 °F	Sept. 18	1
Daily Max.	Temperature	100°F	122 °F	Sept. 19	1
Daily Max.	Temperature	100°F	120 °F	Sept. 21	1
Daily Max.	Temperature	100°F	124 °F	Sept. 22	1
Daily Max.	Temperature	100°F	124 °F	Sept. 23	1
Daily Max.	Temperature	100°F	124 °F	Sept. 24	1
Daily Max.	Temperature	100°F	125 °F	Sept. 25	1
Daily Max.	Temperature	100°F	126 °F	Sept. 26	1
Daily Max.	Temperature	100°F	127 °F	Sept. 28	1
Daily Max.	Temperature	100°F	124 °F	Sept. 30	1
Daily Max.	Temperature	100°F	128 °F	Oct.	At least 1
Daily Max.	Temperature	100°F	122 °F	Nov.	At least 1
Daily Max.	Temperature	100°F	120 °F	Dec.	At least 1
Daily Max.	Temperature	100°F	123 °F	Jan.	At least 1
Daily Max.	Temperature	100°F	122 °F	Feb.	At least 1
Daily Max.	Temperature	100°F	123 °F	Mar.	At least 1
Daily Max.	Temperature	100°F	120 °F	April	At least 1
Daily Max.	Temperature	100°F	130 °F	May	At least 1
Daily Max.	Temperature	100°F	130 °F	June	At least 1

<sup>1</sup> CWA reserves its right to allege violations occurring prior to September 2015 if and when it obtains information showing that temperature exceedences occurred prior to that date. In addition, CWA reserves its right to add days of violation that may have occurred since September 2015 if and when it obtains information showing that temperature exceedences occurred on additional days.

